

STATE OF MICHIGAN
COURT OF APPEALS

Estate of ELIZABETH MCCORKLE, by ERIC A.
BRAVERMAN, Successor Personal
Representative,

UNPUBLISHED
October 23, 2007

Plaintiff-Appellant,

v

No. 274622
Wayne Circuit Court
LC No. 04-435313-NH

LAWRENCE DIEBEL, M.D.,

Defendant-Appellee,

and

UNIVERSITY SURGEONS, P.C., SAVITI
NALLAPA, M.D., AFFILIATED INTERNISTS
CORPORATION, a/k/a UNIVERSITY
INTERNAL MEDICINE SPECIALISTS, and
DETROIT RECEIVING HOSPITAL &
UNIVERSITY HEALTH CENTER,

Defendants.

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's order granting defendants' motion for summary disposition of plaintiff's medical malpractice action pursuant to MCR 2.116(C)(7). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision granting summary disposition, as well as questions concerning whether a statute of limitation bars a claim, and questions of statutory interpretation. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich App 566, 570-571; 703 NW2d 115 (2005).

The parties do not dispute the relevant facts. Plaintiff's decedent received treatment from defendants Diebel and Nallapa in 2001 and died on May 17, 2002. Letters of authority were

issued to Roosevelt McCorkle on June 25, 2002. On May 17, 2004, a notice of intent to file a claim pursuant to MCL 600.2912b was mailed to defendants. McCorkle did not file a complaint. Plaintiff was appointed successor personal representative of the decedent's estate on September 20, 2004. Plaintiff thereafter filed this action on November 15, 2004.

Although the action was not commenced within the two-year period of limitations for medical malpractice actions, MCL 600.5805(6), plaintiff relies on the wrongful death saving statute, MCL 600.5852. Plaintiff filed this action within two years after letters of authority were issued to him and within three years after the medical malpractice period of limitations had run. Pursuant to *Eggleston v Bio-Medical Applications of Detroit, Inc.*, 468 Mich 29, 32; 658 NW2d 139 (2003), the fact that the complaint was not filed within two years after letters of authority were issued to the original personal representative is immaterial. See also *Braverman v Garden City Hosp.*, 272 Mich App 72, 85-87; 724 NW2d 285 (2006) ("*Braverman I*"), special panel convened and opinion vacated in part 272 Mich App 801 (2006).

Defendants asserted that plaintiff's action was improperly filed because plaintiff did not personally serve a notice of intent. Defendant argued that plaintiff could not rely on the notice of intent served by the initial personal representative, because that notice was mailed by a different "person." The trial court agreed and granted defendants' motion for summary disposition.

In *Braverman v Garden City Hosp.*, ___ Mich App ___; ___ NW2d ___ (Docket Nos. 264029, 264091, issued June 5, 2007) ("*Braverman II*"), lv granted¹ ___ Mich ___ (order issued September 26, 2007), this Court expressly rejected the argument that MCL 600.2912b(1) requires that the same person who mailed the notice of intent must file the complaint. The Court expressly held that "[a] notice of intent sent by a predecessor personal representative can support a complaint filed by a successor personal representative." *Id.*, slip op, p 2.

Contrary to what defendants argue, the fact that only 39 days remained in the two-year saving period for the original personal representative did not preclude plaintiff from relying on the notice of intent. MCL 600.5852 allowed plaintiff to bring an action within two years after letters of authority were issued to him and "[t]he statute does not provide that the two-year period is measured from the date letters of authority are issued to the initial personal representative." *Eggleston, supra*, p 33. Indeed, this same situation existed in *Braverman II*, in which this Court determined that the successor personal representative properly could rely on the notice of intent filed by the original personal representative.

Because plaintiff was entitled to rely on the notice of intent filed by the original personal representative, the trial court erred in granting defendants' motion for summary disposition.

¹ "The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(2).

Reversed and remanded. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Richard A. Bandstra

/s/ Alton T. Davis